

REMARKS

In the Final Office Action, the Examiner rejected claims 1-20 under 35 USC 102(b) as being anticipated by Pedersen et al. (“Pedersen”). In an Advisory Action dated March 17th, 2009, the Examiner maintained the previously presented rejections. Applicant respectfully traverses.

Initially, the Examiner states in the Advisory Action that the “Applicant is arguing functional language” somehow implying that this is improper or incorrect or at the very least supportive of the Examiner’s rejection. Respectfully, Applicant finds this troubling as functional language is explicitly proper and must be properly examined.

A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971).

A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. (MPEP 22173.05(g))

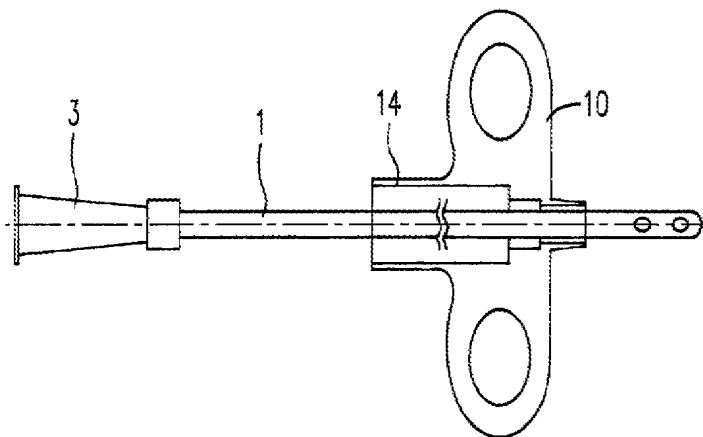
Thus, the claims define structure by stating that the elements are adapted to interlock; hence there is an interlocking structure. In order to expedite prosecution, Applicant has amended the claims to further clarify this structure and to state that the handle and catheter are mechanically locked together as the Examiner is apparently of the opinion that any physical contact between two elements meets a “broad” interpretation of the term “interlock” alone. Specifically, the Examiner asserts that “interlock” means to unite or join closely; to connect *and* that the pinching action of the Pedersen et al. reference *meets* this definition. Applicant respectfully traverses and asserts that picking up a pen with one’s fingers does not interlock the pen to the fingers and that this contrast ought to be readily apparent under any broad and *reasonable* interpretation of “interlock.”

As the Examiner is well aware, in order for a reference to anticipate a claim that reference must teach each and every element of the claim. Contrary to the Examiner’s

assertions, Pedersen fails to teach a handle that is adapted to interlock with the catheter element. Accordingly, the rejection is improper, unsupportable and must be withdrawn.

In applying Pedersen, the Examiner interprets “break off compartment 10” to be the claimed handle. The Examiner then refers to the arrangement of Figure 5, when concluding that this compartment 10 is “adapted to be interlocked” with Pedersen’s catheter element 1. This statement is factually incorrect as the compartment 10 does not and is not configured to interlock with the catheter 1.

As shown in Figure 5 of Pedersen and represented below, the catheter 1 is positioned and freely moveable relative to the compartment 10. Further, as illustrated, the walls 14 of the compartment 10 are positioned relative to a segment of the main catheter component 1(i.e., that which is likely lubricated and intended for insertion into a urethra).



The Pedersen specification states that the flexible walls 14 “may be squeezed into engagement with the catheter 1 by a moderate finger pressure . . . without touching the catheter 1 directly.” Col 5, lines 36 – 42. Thus, the compartment 10 is no more “interlocked” with the catheter 1 than a person’s fingers would be when holding the same directly through the same gentle squeezing.

Contact between parts does not necessarily equate to interlocking the same two parts. Interlock means to become locked together or interconnected; to lock together; or unite. This is distinguished from the barrier to direct contact provided by Pedersen and referred to by the Examiner. In fact, the only component that is in any way connected with the Pedersen catheter 1

Applicants : Tanghoj
Serial No. : 10/552,717
Filed : 7 Aug 2006
Page : 7 of 8

Attorney Docket No.: 2003007-US

is the hose member 4 (i.e., the container) which is inseparably connected (Col. 4, line 37) to the “connector” 6.

As Pedersen fails to teach a handle that is adapted to interlock with a catheter element, it cannot anticipate Claims 1 and 16 or those that depend therefrom. With respect to claim 10, the method requires connection of the handle to the catheter and then removal of the catheter from the container, which Pedersen fails to teach and the Examiner did not address in the above referenced Office Action.

Applicants : Tanghoj
Serial No. : 10/552,717
Filed : 7 Aug 2006
Page : 8 of 8

Attorney Docket No.: 2003007-US

CONCLUSION

Applicant respectfully asserts that the pending claims are in condition for allowance and notice of the same is respectfully requested. Should any issues remain outstanding, the Examiner is respectfully urged to telephone the undersigned. No additional fee are believed due at this time; however, the office is authorized to charge any fees actually due and credit any overpayment to deposit account 50-4439.

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Respectfully submitted,
Pedersen et al.

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